

cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set forth in §39.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§39.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

PART 40—ADMINISTRATION OF EDUCATIONAL LOANS, GRANTS AND OTHER ASSISTANCE FOR HIGHER EDUCATION

Sec.

- 40.1 Appropriations for loans or grants.
- 40.2 Working scholarships.
- 40.3 Applications.
- 40.4 Security.
- 40.5 Repayments.

AUTHORITY: Sec. 11, 48 Stat. 986; 25 U.S.C. 471.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§40.1 Appropriations for loans or grants.

Funds appropriated by Congress for the education of Indians may be used for making educational loans and grants to aid students of one-fourth or more degree of Indian blood attending accredited institutions of higher education or other accredited schools offering vocational and technical training who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted

lands under the jurisdiction of the Bureau of Indian Affairs. Such educational loans and grants may be made also to students of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such loans or grants would have a direct effect upon Bureau programs within the reservation. After students meeting these eligibility requirements are taken care of, Indian students who do not meet the residency requirements but are otherwise eligible may be considered.

[33 FR 9708, July 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§40.2 Working scholarships.

Working scholarships may be granted to Indians who wish to earn their board and room by part-time work at Federal boarding schools that are located near a college, trade, or vocational school.

§40.3 Applications.

Applications for educational loans, grants, and working scholarships shall be submitted through the superintendent or officer in charge of the agency at which the applicant is enrolled in the manner prescribed by the Commissioner.

§40.4 Security.

If a borrower or cosigner has security to offer for an educational loan it must be given in an amount adequate to protect the loan.

§40.5 Repayments.

Repayment schedules for educational loans may provide not to exceed two years for repayment for each year in school.

PART 41—GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

Subpart A—Tribally Controlled Community Colleges

Sec.

- 41.1 Purpose.
- 41.2 Scope.
- 41.3 Definitions.
- 41.4 Eligible recipients.
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- 41.6 HHS participation.
- 41.7 Feasibility studies.
- 41.8 Grants.
- 41.9 Reports.
- 41.10 Technical assistance.
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Subpart B—Navajo Community College

- 41.20 Policy.
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- 41.23 Eligible activities.
- 41.24 Grants.
- 41.25 Reports.
- 41.26 Technical assistance.
- 41.27 General provisions.
- 41.28 Criminal penalties.

AUTHORITY: Secs. 114 and 203(a), Pub. L. 95-471, 25 U.S.C. 1815, 25 U.S.C. 640c-1(c).

SOURCE: 44 FR 67042, Nov. 21, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—Tribally Controlled Community Colleges

§ 41.1 Purpose.

The policy of the Department of the Interior is to support and encourage the establishment, operation, and improvement of tribally controlled community colleges to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end under the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

§ 41.2 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Community Colleges under title I of the Act. They do not apply to the provision of assistance to Navajo Community College. Subpart B of this part applies to assistance to Navajo Community College under title II of the Act.

§ 41.3 Definitions.

As used in this subpart A:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which a community college normally

subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by a community college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior, or his/her duly authorized representative.

(e) *Community College* means an institution of higher education which (1) is formally controlled or operated and managed by the governing body of an Indian Tribe or by the governing bodies of two or more Indian Tribes, or (2) is established or is otherwise sanctioned or chartered by resolution, ordinance, or other official action (which is still in full force and effect) of such governing body or bodies. However, for purposes of this definition, only one such institution shall be recognized with respect to any one Tribe. A Community College that meets the requirements of this definition with respect to more than one Tribe must meet such requirements with respect to at least one Tribe that has no other currently formally controlled, operated and managed, established, sanctioned, or chartered Community College.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent or FTE*, means the number of Indian students (1) enrolled full-time for an entire academic term at a community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at a community college (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term, divided by twelve

(12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as $FTE = FT + PTCR/12$ where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian Tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Institution of higher education* as defined in Pub. L. 95-471 (incorporating in part 1201 of the Higher Education Act of 1965), means an educational institution in any State which

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(3) Is a public or other nonprofit institution, and

(4) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

(A) Is an institution with respect to which the Commissioner of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determina-

tion is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (3), and (4). Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

(k) *National Indian Organization* means any organization of Indians, found by the Director of Education to be nationally based, representing a substantial Indian constituency, and expert in the field of Indian education. Notice of such findings shall be published in the FEDERAL REGISTER with an opportunity for comment from the public and no such finding shall be effective earlier than 30 days after publication.

(l) *Operating expenses of education programs* means the obligations and expenditures of a community college for post-secondary activities, including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, fixed charges, and other related expenses, but not including expenditures for the acquisition or construction of academic facilities. (The term *academic facilities* means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs of an institution of higher education or as dormitories or

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student services buildings, and maintenance, storage, support, or utility facilities essential to operation of the foregoing facilities.)

(m) *Part-time* means registered for less than twelve (12) credit hours for an academic term; *full-time* means registered for twelve (12) or more credit hours for an academic term.

(n) *Unused portion of received funds* means the amount of financial assistance provided under this subpart to a Community College for an academic year which has not been obligated or expended by the Community College by July 1 of that academic year.

§ 41.4 Eligible recipients.

Financial assistance under this subpart shall be available only to a Community College which:

(a) Is governed by a board of directors, regents, or trustees, a majority of whom are Indians;

(b) Demonstrates its adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians, and has formally adopted, in writing, such goals, philosophy, or plan of operation, which may be in the form of a constitution, by-laws, or policy statement of the Community College;

(c) If in operation for more than one year, has students a majority of whom are Indian; and

(d) Upon completion of a feasibility study, receives a positive determination, and;

(e) Is not in violation of § 41.11 of this subpart.

§ 41.5 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating expenses of education programs of Community Colleges. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.6 HHS participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Sec-

retary for Education, Department of Health and Human Services, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

[44 FR 67042, Nov. 21, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 41.7 Feasibility studies.

(a) Grants under § 41.8 of this subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

(1) Financial feasibility based upon potential enrollment;

(2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;

(3) Tribal, linguistics, or cultural differences;

(4) Isolation;

(5) Presence of alternate education sources;

(6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed

with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College (or both) may present additional evidence or arguments to justify feasibility. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling either confirming, modifying, or reversing the original determination. The ruling, which shall be final for the Department, shall be mailed or otherwise delivered to the appealing Tribe and the Community College within one week of its issuance. In any case where the original negative determination is not reversed, the Assistant Secretary's ruling shall specify the grounds for the decision and state the manner in which the determination related to each of the factors specified.

(f) A negative determination shall not prevent a Tribe from requesting another feasibility study, but no more than one feasibility study shall be requested for any given Community College per year.

§ 41.8 Grants.

(a) Each Community College which has received a positive feasibility study determination under § 41.7 of this subpart shall be entitled to apply for financial assistance under this subpart.

(b) Except with respect to applications for grants for the 1979–1980 academic year, each Community College

shall make an application to the Director of Education before January 31, of the year preceding the academic year for which financial assistance is requested. Each application must contain the following information:

(1) The name and address of the Community College and the names of the members of the governing board and the number of its members who are Indian;

(2) A statement that the Community College has received a positive feasibility determination and the date thereof;

(3) A written statement of the goals, philosophy, or proposed plan of operation sufficient to demonstrate that its education program or proposed program is designed to meet the needs of Indians;

(4) In the case of a Community College which has been in operation for more than one year, a statement of the total number of FTE Indian students and the total number of all FTE students;

(5) If the Community College has not yet begun operations, a statement of expected enrollment, including the total number of FTE students and the number of FTE Indian students;

(6) The name and address of the Indian Tribe or Tribes which control or operate and manage, or have established, sanctioned, or chartered the Community College, and a statement as to which of those Tribes have not done so with respect to any other Community College;

(7) A curriculum, which may be in the form of a college catalog or like publication;

(8) A proposed budget, showing total expected operating expenses of education programs and expected revenues from all sources for the academic year to which the information applies;

(9) An assurance that the Community College will not deny admission to any Indian student because that student is not a member of a specific tribe or because such student is a member of a specific tribe, and will comply with the requirements set forth in § 41.11 of this subpart together with any request and justification for a specific waiver of any requirement of 25 CFR part 276

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which the Community College believes to be inappropriate;

(10) Certification by the chief executive officer of the Community College that the information on the application is complete and correct and that the application has been filed with the governing body or bodies of the Tribe or Tribes which control or have sanctioned or chartered it.

(c)(1) Within thirty (30) days of receiving an application required under paragraph (b) of this section, the Director of Education shall review the application submitted by the Community College and any comments with respect thereto filed by the Tribe(s) or by any national Indian organization(s) whose assistance has been requested by the Community College, and make a grant award in an amount determined under paragraph (d) of this section to the Community College if the application qualifies the Community College to receive a grant.

(2) In the case of any Community College whose application is not approved, the Director shall promptly send a notice of such action to the Community College. Such notice shall include a statement of the specific reasons for not approving the application and a statement advising the College of its right within thirty (30) days to amend or supplement the application on file to rectify the defect.

(3) Final disapproval of a grant application by the Director after the thirty day period referred to in paragraph (c)(2) of this section, or a failure of the Director of Education to approve an application within thirty (30) days of its receipt may be appealed by a Community College in the same manner as provided in paragraphs (d) and (f) of § 41.7.

(4) A Grant award under an approved application shall be evidenced by a grant agreement, signed by the Director of Education, incorporating the application and the provisions required by § 41.11.

(d)(1) In fiscal year 1980, each Community College which qualifies for a grant will receive a grant for academic year 1979-80; thereafter each Community College which qualifies for a grant shall receive a grant for the academic year commencing after the date of approval of its application. Except as provided in paragraph (d)(3) of this section grants shall be in an amount equal to \$4,000 multiplied by the number of FTE Indian students in attendance at such college during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the Community College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4,000 \times \frac{FTE_{\text{TERM 1}} + FTE_{\text{TERM 2}} + \cdots + FTE_{\text{TERM N}}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 41.3(g) of this subpart and N is the number of academic terms in the academic year.

(2) For the first Federal fiscal year for which funds are appropriated for grants under this subpart, not less than eight (8) nor more than fifteen (15) grants shall be approved; priority in awarding such grants shall be given to Community Colleges which are operating on October 17, 1978, and which

have a history of service to the Indian people. (If more than fifteen (15) Community Colleges meeting these two (2) conditions submit applications for the first fiscal year, a further priority for awarding grants among them shall be given to those who appear to be in the best position to fulfill the purpose of the Act and to those whose continued existence would be threatened if they did not receive such a grant).

(3) All grants under this section shall be subject to the availability of appropriations and the amount thereof shall

be ratably reduced for all Community Colleges if the sums appropriated for any fiscal year for financial assistance under this subpart are not sufficient to pay the full amounts to which the eligible Community Colleges are otherwise entitled under paragraph (d)(1) of this section.

(e) The Director of Education shall authorize payments to each such Community College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section on or before October 1st of such College's academic year (except for 1979–80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding academic year. On or before January 1st (or such other date that is the first day of the fifth month) of such College's academic year, payments shall be made in the form of advance installments to each Community College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section, calculated on the basis of registrations at the conclusion of sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of each such academic year the balance of the grant amount to which each College is entitled under paragraph (d) of this section shall be paid to such College. In the event that additional sums are appropriated to which such Community Colleges are entitled under section 110(a) of the Act and paragraph (d) of this section, these amounts shall be included in such final payments.

(f) If with respect to any academic year the amounts of financial assistance hereunder have been ratably reduced as provided in paragraph (d)(3) of this section and additional funds have

not been appropriated to pay the full amount of such reductions on or before June 1st of such year, the Director of Education shall notify each Community College of such fact in writing, and each Community College shall report in writing to the Director of Education on or before July 1st of such year the amount of unused portion of received funds. The total of such reported unused portions of received funds shall be reallocated by the Director of Education in proportion to the amount of financial assistance to which each Community College is entitled under paragraph (d) but which has not been provided due to the ratable reductions provided for therein, (except that no Community College shall receive more than the total annual cost of the education programs provided by such College) and payments shall be made reflecting such reallocations on or before August 1st of such academic year.

(g) If the Director of Education determines that a Community College has received, through mistake or fraud, payments of financial assistance under this subpart to which it was not entitled, the Director shall promptly notify the college, which may appeal the Director's determination under the procedures set forth in § 41.7, and adjust the amount of payments to the college under this subpart for the same or subsequent academic years to compensate for such overpayments or otherwise attempt to recover such overpayments.

(h) Eligibility for grants under this subpart shall not, by itself, bar a Community College from qualifying for or receiving financial assistance under any other Federal program for which it may qualify.

§ 41.9 Reports.

Each Community College receiving financial assistance under this subpart shall provide to the Director of Education on or before December 1st of each year a report which shall include an accounting of the amounts and purposes for which such financial assistance was expended during the preceding academic year; the annual cost of education programs of the Community College from all sources for such academic year; and a final report of the

performance based upon the criteria set forth in the Community College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. Each Community College shall in addition report to the Director of Education its FTE Indian student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 41.10 Technical assistance.

The Director of Education shall furnish technical assistance either directly or through contract to any Community College requesting it. Such assistance shall be initiated within thirty (30) days of a Community College's request in writing. In any case, where the type and source of technical assistance is specified in the request, the Director, to the extent possible or feasible, shall provide the type of technical assistance through the source so specified. Technical assistance may include, but is not limited to, consulting services for the development of programs, plans, and feasibility studies and accounting, and other technical advice. In awarding of contracts for technical assistance, preference shall be given to an organization designated by the Community College to be assisted. Denials of requests for technical assistance under this section shall be made in writing and sent to the applicant within thirty (30) days of the request, together with a statement of the reason for denial. An appeal under this section may be undertaken in the same manner as in the case of negative determinations of feasibility under § 41.7 of his subpart.

§ 41.11 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to Community Colleges:

(a) Services or assistance provided to Indians by Community Colleges aided under this subpart shall be provided in a fair and uniform manner, and admission to any such Community College shall not be denied to any Indian student because such individual is not a member of a specific Indian tribe or be-

cause such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, any Community College receiving financial assistance under this subpart shall comply with part 276 of this title, subject to any express waiver of specific inappropriate provisions of part 276 that may be granted by the Assistant Secretary after request and justification by the Community College.

(c) A Community College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days after the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying, or reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 41.12 Annual budget.

Appropriations under title I of the Tribally Controlled Community College Assistance Act of 1978 shall be separately identified in the Bureau of Indian Affairs Budget Justification. Funds appropriated for grants under this subpart shall not be commingled with other funds expended by the Bureau of Indian Affairs.

§ 41.13 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of Federal financial assistance or any other payment of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

Subpart B—Navajo Community College

§ 41.20 Policy.

It is the policy of this Department to support and encourage the establishment, operation, and improvement of tribally controlled community colleges in order to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end for the Navajo Community College under the Navajo Community College Act, as amended (25 U.S.C. 640a–c).

§ 41.21 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Navajo Community College pursuant to the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646, 25 U.S.C. 640a–c) as amended by the Navajo Community College Assistance Act of 1978, title II of the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 1329, 25 U.S.C. 640c). Regulations applicable to Tribally Controlled Community Colleges other than Navajo Community College are found in subpart A of this part 41.

§ 41.22 Definitions.

As used in this subpart:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which the college normally subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by the college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646) as amended by the Navajo Community College Assistance Act of 1978, (Pub. L. 95–471, title II, 92 Stat. 1329, 25 U.S.C. 640a *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of

the Department of the Interior or his/her duly authorized representative.

(e) *College* means the institution known as Navajo Community College established by the Navajo Tribe.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE* means the number of Indian students (1) enrolled full-time for an entire academic term at the College, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at the College (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term divided by (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as $FTE = FT + PTCR/12$ where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or Regional or Village Corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Operating and Maintenance Expenses of Education Programs* means the

obligation and expenditures by the College for post-secondary education activities including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, and fixed charges, and other related expenses, but not including obligations or expenditures for the acquisition or construction of academic facilities (as defined in § 41.3(l) of subpart A).

§ 41.23 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating and maintenance expenses of education programs of the College. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.24 Grants.

(a) Navajo Community College is entitled to annual grants for operation and maintenance of the College in amounts based upon the number of Full-Time Equivalent Indian students in attendance.

(b) Annually, in the manner and within the deadline established by the Director of Education, the Navajo Community College shall submit an application in the form of a statement of its FTE enrollment (total and Indian) for the next academic year. The statement shall include a description of the College's curriculum, which may be in the form of a College catalog or like publication, and a proposed budget showing total expected operating expenses of educational programs and ex-

pected revenue from all sources for the academic year for which the information applies. The statement shall be certified by the chief executive officer of the College and shall certify that a copy of that statement has been submitted to the Navajo Tribe.

(c) Annual budget request for the College shall be separately identified in the Bureau of Indian Affairs Budget Justifications. Funds appropriated for grants under this subpart shall not be commingled with other funds appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(d) Within thirty (30) days of submission of the statement required under paragraph (b) of this section, the Director of Education shall make a grant award to the College in an amount determined under paragraph (e) of this section. The grant award shall be evidenced by a grant agreement signed by the Director of Education, incorporating the grant application and including the provisions required by § 41.27 of this subpart.

(e) The College shall be eligible to receive a grant for the fiscal year beginning October 1, 1979, and for each succeeding year, in an amount equal to \$4,000 multiplied by the number of FTE Indian students in attendance at the College during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4,000 \times \frac{FTE_{\text{TERM 1}} + FTE_{\text{TERM 2}} + \dots + FTE_{\text{TERM N}}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 41.22(g) of this subpart and N is the number of academic terms in the academic year. The amount and payment of such grants shall be subject to

the availability of annual appropriations.

(f) The Director of Education shall authorize payments to the College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the

grant amount available for allotment to the College for such academic year under paragraph (e) of this section on or before October 1st of such academic year (except 1979–80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA, whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding year. On or before January 1st (or such other date that is the first day of the fifth month) of such academic year, payment shall be made in the form of such advance installments to the College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section, calculated on the basis of registrations as in effect at the conclusion of the sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of such academic year, the balance of the grant amount to which the College is entitled under paragraph (e) of this section shall be paid to the College. In the event that additional sums are appropriated for the benefit of the College, these sums shall be included in the final payment.

(g) Overpayments of grants under this subpart may be recovered in the manner provided by § 41.8(g) of subpart A.

(h) Payments to the Navajo Community College under this subpart shall not disqualify the College from applying for or receiving grants or contracts under any other Federal programs for which it may qualify.

§ 41.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a

final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 41.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this subpart and accounting, and other technical advice and assistance.

§ 41.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this subpart shall be provided in a fair and uniform manner, and admission to the College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, the College shall comply with part 276 of this title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 41.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

PART 42—STUDENT RIGHTS AND DUE PROCESS PROCEDURES

Sec.

- 42.1 Purpose.
- 42.2 Application to Bureau schools.
- 42.3 Rights of the individual student.
- 42.4 Due process.
- 42.5 Application to schools under Bureau contract.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 39 FR 32741, Sept. 11, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 42.1 Purpose.

The regulations in this part govern establishing programs of student rights and due process procedures in Bureau of Indian Affairs schools and in schools

that are operating under contract with the Bureau of Indian Affairs.

§ 42.2 Application to Bureau schools.

All Bureau of Indian Affairs schools shall be governed by the regulations set forth in this part and said regulations shall be expressly included as a part of the local school regulations of each Bureau of Indian Affairs school. Upon admission, all students of Bureau of Indian Affairs schools shall be given a copy of the school regulations governing the conduct of students and shall be notified of any amendments thereto.

§ 42.3 Rights of the individual student.

Individual students at Bureau of Indian Affairs schools have, and shall be accorded, the following rights:

- (a) The right to an education.
- (b) The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.
- (c) The right to make his or her own decisions where applicable.
- (d) The right to freedom of religion and culture.
- (e) The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or endanger the health and safety of the student or others.
- (f) The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.
- (g) The right to peaceably assemble and to petition the redress of grievances.
- (h) The right to freedom from discrimination.
- (i) The right to due process. Every student is entitled to due process in every instance of disciplinary action for alleged violation of school regulations for which the student may be subjected to penalties of suspension, expulsion, or transfer.

§ 42.4 Due process.

Due process shall include: